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Supreme Court, U.S.
FILED

No. 101165

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In The

Supreme Court of the United States

RAFIK M. HANNA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

A Writ of Certiorari should be granted in this case in order for this Honorable Court to address the issues of significant legal importance regarding whether gifts may be considered income within the meaning of 18 U.S.C. § 228(a)(1) and (3) in determining a child support order.

PARTIES TO PROCEEDING

Rafik M. Hanna, Petitioner

United States of America, Respondent

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OPINION AND JUDGMENT BELOW

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STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Child Support Recovery Act ("CSRA"), 18 U.S.C. § 228(a)(1) and the Deadbeat Parents Punishment Act ("DPPA"), 18 U.S.C. § 228(a)(3).

STATEMENT OF JURISDICTION

By judgment entered December 22, 2010, the United States Court of Appeals for the Seventh Circuit dismissed Petitioner's Appeal.

Petitioner thereafter timely filed this Petition for Writ of Certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This is an appeal of the Petitioner's conviction of one count of willful failure to pay a support obligation with respect to a child who resides in another state, in violation of 18 U.S.C. § 228(a)(3). This appeal is taken from the final decision of the U.S. District

Court for the Northern District of Illinois entered on February 3, 2010, by the Honorable Judge David H. Coar. Judge Coar sentenced the Petitioner to 24 months of imprisonment followed by 1 year of supervised release. The Petitioner was ordered to pay a Special Assessment of $100.00 and to pay restitution in the amount of $247,843.99. The Petitioner timely filed a notice of appeal on February 10, 2010. By judgment entered December 22, 2010, the United States Court of Appeals for the Seventh Circuit dismissed Petitioner's Appeal.

STATEMENT OF THE FACTS

The Petitioner, Rafik M. Hanna, and Colleen M. Hanna were married in Iowa City, Iowa, on May 1, 1993. Transcript (hereinafter Tr.) 36. Their daughter, Maria T. Hanna, was born on August 4, 1996. Tr. 33.

Ms. Hanna filed for divorce in 1997, but the couple lived together until June 1998. Tr. 215. The Dupage County Court finalized the divorce in March 1999. Tr. 39. On September 6, 2001, the Dupage Court ordered the Petitioner to pay biweekly installments of $967.38, 26 times per year. Tr. 42, 57. The September 6, 2001, order was never amended. Tr. 43, 64. When the Petitioner had extra available funds, he paid more than what was ordered. Tr. 44. The Petitioner currently lives in Washington, while Ms. Hanna and Maria Hanna reside in Naperville, Illinois. Tr. 33.

Beginning in 2002, the Petitioner began to have trouble finding full-time employment. Tr. 223. Between 2002 and 2005, the Petitioner was unable to secure any form of substantial employment and only worked sporadically for a temporary agency. *Id.* From 2005-2009, the Petitioner did not earn any income. Tr. 181, 288. During this time period the Petitioner only leased vehicles and rented his apartment. Tr. 176. Because the Petitioner was unable to find gainful employment, he had no income to pay for his child support. Tr. 224. It was his intention to search for and obtain employment. *Id.*, 220-21. His situation worsened when all six of his medical licenses were suspended for non-payment of child support, and he lost the opportunity to earn gainful employment. Tr. 233.

Since the Petitioner was unable to find employment, the Petitioner's family members gave money to him so that he would have a way to support himself. Tr. 186-87, 208. The purpose of the monetary gifts was to provide for the Petitioner's expenses, including paying of his credit card debt. Tr. 194. The Petitioner did not use the gifts he received from his family to pay child support because he believed that the money was a gift, and he had to spend the money in accordance with his family's wishes. Tr. 238. Following his sentencing, the Petitioner immediately made approximately $167,000, with his family's consent, in payment towards the restitution amount.

STATUTORY AND REGULATORY BACKGROUND

This case involves failure to pay child support obligations in violation of the Child Support Recovery Act ("CSRA"), 18 U.S.C. § 228(a)(1) and the Deadbeat Parents Punishment Act ("DPPA"), 18 U.S.C. § 228(a)(3) (collectively, "§ 228(a)"). The CSRA makes it a federal criminal offense for a person to "willfully fail[ ] to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000." 18 U.S.C. § 228(a)(1). The DPPA likewise makes it a federal felony offense for a person to "willfully fail[ ] to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than $10,000." 18 U.S.C. § 228(a)(3). For each provision, a "support obligation" means "any amount determined under a court order or an order of an administrative process pursuant to the law of a State . . . to be due from a person for the support and maintenance of a child." 18 U.S.C. § 228(f)(3). Finally, upon a conviction under either provision, "the court shall order restitution under 18 U.S.C. § 3663A in an amount equal to the total unpaid support obligation as it exists at the time of sentencing." 18 U.S.C. § 228(d).

REASONS FOR GRANTING THE WRIT

Writ of Certiorari should be granted in this case in order for this Honorable Court to address the issues of significant legal importance regarding whether gifts may be considered income within the meaning of 18 U.S.C. § 228(a)(1) and (3) in determining a child support order. This issue has significant legal importance in that there is: (1) a desirability of national uniformity; (2) ambiguity of the statute and corresponding regulations; (3) a dearth of law in all circuits related to these questions; 4) a high volume of cases that this issue implicates.

ARGUMENT OF THE FIRST ISSUE

To establish a child support order in Illinois, the amount of child support considered for the order depends on the non-custodial parent's net income and the number of children for which he is responsible. 750 Ill. Comp. Stat. 5/505 (1997). The court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for the child's support. *Id.* The duty of support owed to a child includes the obligation to provide for the reasonable and necessary physical, mental and emotional health needs of the child. *Id.*

Illinois statute further defines, "income" as any periodic form of payment due an individual, regardless of source, including wages and salaries, commissions, bonuses, Workers' Compensation, disability,

payments pursuant to a pension or retirement program, severance pay and interest. *Id*; *see Slagel v. Wessels*, 732 N.E.2d 720, 721 (2000) (defining income as total of all income, from all sources, minus several enumerated deductions). Nowhere in this definition of income does it state that monetary gifts constitute income for child support.

The Seventh Circuit erroneously relies on 750 ILCS 5/505(a)(3) to state that gifts that are given for the purpose of support and maintenance are considered income, not deductions. 750 ILCS 5/505(a)(3) states:

> Net income is income from all sources (including second jobs, overtime, holiday pay, etc.) minus the following deductions:
>
> - Federal income tax (which has been properly calculated)
> - State income tax (which has been properly calculated)
> - Social Security (FICA payments)
> - Mandatory retirement contributions required by law or as a condition of employment
> - Union dues
> - Dependent and individual health/ hospitalization insurance premiums
> - Prior obligations of support or maintenance actually paid pursuant to a court order

- Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. *Id.*

Here, the statute specifically mentions "gifts" in the context of expenditures for the benefit of the child and the other parent. In this case, the Petitioner's family specifically gave him monetary support for the purposes of paying for his daily expenses such as rent, food, credit card debts, etc. The Petitioner needed this support himself as he was unable to obtain employment after his medical license was revoked. If the Petitioner's family had directly paid these expenses they could never be considered income within the meaning of the statute. Gifts cannot be considered income as they are not a steady source of monetary funds, but are at the discretion of the giftor.

Under the same reasoning, other states and courts have explicitly excluded considering gifts as a part of income when determining child support obligations. The New Hampshire statute on child support, for example, does not include gifts in the determination of gross income. N.H. Rev. Stat. Ann. § 458-C:2 (2008); *see In the Matter of Fulton*, 910 A.2d 1180 (N.H. 2006). The State Supreme Court has noted that in contrast to "the wage earner, lottery winner, trust beneficiary and alimony recipient [who] all have a legal right to the funds due them and the

payers have an obligation to provide them," the defendant has no legal right to the gifts, and no legal obligation to forward the payment to his child support obligations. A.2d 1180 at 1184. Moreover, the *Fulton* court noted that if it were to include gifts in the definition of gross income, "than all monetary gifts no matter their size or frequency would be included. To require parties to account for all gifts, no matter how minute or sporadic, would be, in many cases, onerous and may tempt many parties to disguise gifts as loans or some other form of payment in order to avoid inclusion." *Id.*

The reasoning that is explicitly exposed in the *Fulton* and implicitly found in the Illinois statute is applicable to the Petitioner's case. The Petitioner received assistance from his mother and his uncle, Samuel A. Fam. Tr. 186, 208. This assistance was provided so that the Petitioner could pay his credit card debt and support himself during unemployment. When the Petitioner received these funds from his family members he understood that the funds were for supporting his basic needs and he conditionally accepted the funds for that purpose. Tr. 229, 231. The district court erred in failing to consider and properly instruct the jury on this definition and argument. Had the jury been made aware of the argument, no rational trier of fact would have concluded that a gift intended for monetary support constitutes "net income" for child support purposes. Unlike winning the lottery, the Petitioner did not have free discretion to spend the money. He was obliged to follow the wishes

of the giftors and utilize the funds to support himself. Tr. 236, 243.

ARGUMENT OF THE SECOND ISSUE

The Government failed to prove that the Petitioner willfully evaded child support payment because the Petitioner did not have an income to make payments, and thus the Government did not meet the burden of proving this element beyond a reasonable doubt.

When considering a challenge to the sufficiency of the evidence, this Court will review the evidence and "the test is whether, after viewing the evidence in the light most favorable to the government, any rational trier of fact could have found the essential elements of crime beyond a reasonable doubt." *United States v. Nesbitt*, 852 F.2d 1501, 1509 (7th Cir. 1998).

18 U.S.C. § 228(a)(3) requires that a parent *willfully* fail to pay a child support obligation with respect "to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than $10,000." The meaning of the term "willfully" is "often dependent on the context in which it appears." *Byran v. United States*, 118 S.Ct. 1939, 1944-45 (1998). However, if a defendant "is unable to pay even some of his past due child support obligations, his failure to pay cannot be either voluntary or intentional and thus cannot be

willful within the meaning" of the statute. *United States. v. Mattice*, 186 F.3d 219, 228 (2d Cir. 1999).

Within the meaning of 18 U.S.C. § 228, it is important to note that the statute only criminalizes the *willful* disobedience of a state child support order. *United States v. Kramer*, 225 F.3d 847, 857 (7th Cir. 2000) (emphasis added). The legislative history of the statute makes clear that Congress intended that, in this statute, the term "willfully" be given the same meaning that it is given in the criminal tax statutes. *See id.*; H.R. Rep. No. 102-771. Congress, in enacting this statute, was well aware that, by using the term "willfully," the Government would be required to prove "an intentional violation of a known legal duty." *Id.* The House Report noted that the word "willfully" under the tax felony statute "imports a bad purpose or evil motive." 225 F.3d at 857 (quoting H.R. Rep. No. 102-771).

In this case, the Petitioner did not "willfully" violate a known duty as he did not have an income as he himself was being supported by others.

In *United States v. Black*, the court discussed and focused on the element of willfulness. In the *Black* case the defendant attempted to submit 1992-1993 amended tax returns demonstrating that his income was based on borrowed funds as opposed to earned income, negating the element of willfulness. *United States v. Black*, 125 F.3d 454, 465 (7th Cir. 1997). On appeal, the *Black* court determined that "[i]t makes no difference what source Davis [the defendant]

claims to have received income. What matters is that he still had income, *in whatever form he wishes to characterize it*." *Id.* at 465-66 (emphasis added); *see also United States v. Harrison*, 188 F.3d 985, 987 (8th Cir. 1999) (reaffirming *United States v. Black* by stating that "[i]t makes no difference from what source [the defendant] . . . received income. What matters is that he . . . had income, in whatever form he wishes to characterize it"). The *Black* court determined that the defendant had characterized "borrowed" funds as part of his income, and consequently there was clear evidence of willfulness of nonpayment of child support. 125 F.3d at 465.

In the current case, the Government did not provide sufficient evidence to establish this essential element of willfulness. The case at hand differs from the *Black* case because the Petitioner did not consider the funds that he received as income because the money that he received to sustain himself was a gift. He did not characterize the money as income but rather noted that he had to spend the money in the manner prescribed by the giftors. In contrast, during 2001-2003, the Petitioner *characterized himself as having income*. During these years he paid the bi-weekly installments and complied with the Court Order. Tr. 238. Moreover, when the Petitioner characterized himself as having an income, he paid more than the court order. Tr. 44.

Furthermore, the Petitioner did not take steps to avoid earning an income, negating any reasonable belief that his conduct was willful. Between the years

of 2002-2004, the Petitioner actively sought work, whether it was through temporary employment or through Locum Tenes, a temporary assignment firm. During this period, unlike other parents who willfully sought to avoid their child support obligations, the Petitioner sought to earn a living. *Cf. United States v. Williams*, 121 F.3d 615, 621 (11th Cir. 1997) (noting that Petitioner lacked the finances to pay his child support obligation "due solely to his decision to take steps specifically calculated to eliminate his ability to do so.") His ardent search for full-time employment did not end until his medical licenses were suspended, due to non-payment of child support, and he was no longer even eligible to find work as a medical doctor. His search is evidence that his actions were not willful within the meaning of the statute. The Petitioner is not a man who acted with a "bad purpose or evil motive," and instead sought to earn a living so that he one day would be able to comply with his support obligations. *Kramer*, 225 F.3d at 857.

It is unreasonable for the decision to expect that the Petitioner would have the ability to pay child support of over $25,000 per year while he had no gainful employment and no steady source of income. Given that the Petitioner did not have an income and actively sought employment, the Petitioner's "failure to pay cannot be either voluntary or intentional and thus cannot be willful within meaning" of the statute, and the Government did not meet its burden of

proving the element beyond a reasonable doubt. *Mattice*, 186 F.3d at 228.

ARGUMENT OF THE THIRD ISSUE

The Judge failed to instruct the jury regarding U.S. tax law regarding income and detrimentally prejudiced the Petitioner in preventing the jury from considering the theory of defense.

When evaluating whether the district court committed an error in failing to properly instruct the jury, the court will question whether the instruction or omission constituted "plain error" within the meaning of Fed.R.Crim.P. 52(b). In deciding whether a defect in jury instructions is "plain error" the court must investigate "the entire record before us . . . and determine whether the instructional mistake had a probable impact on the jury's finding that the defendant was guilty." *United States v. Jackson*, 569 F.2d 1003, 1010 (7th Cir. 1978).

In general, a party may request in writing that the court instruct the jury on the law as specified in the request. Fed.R.Crim.P. 30(a). State courts have explained that "[f]undamental fairness includes, among other things, seeing to it that certain basic instructions, essential to a fair determination of the case by the jury, are given." *People v. Pegram*, 529 N.E.2d 506, 509 (1988) (quoting *People v. Ogunsola*, 429 N.E.2d 861, 864 (1981).

Furthermore, a defendant is "'entitled to have the jury consider any theory of the defense which is supported by law and which has some foundation in the evidence, however tenuous.'" *United States v. Boucher*, 796 F.2d 972 (7th Cir. 1986) (quoting *United States v. Grimes*, 413 F.2d 1376, 1378 (7th Cir. 1969). This does not mean that the defendant is necessarily entitled to have a particular instruction presented, but the defendant is entitled to have his theory presented to the jury. *Boucher*, 796 F.2d at 976; *see also United States v. Bovkins*, 9 F.3d 1278, 1285 (7th Cir. 1993) (expounding that defendant is entitled to instruction on theory of case if he proposes correct statement of law, theory is supported by evidence, his theory of defense is not part of the charge, and the failure to include an instruction on his theory of defense in the jury charge denied him a fair trial).

In the instant case, the Judge failed to instruct the jury regarding the U.S. Tax Code, specifically 26 U.S.C. § 102(a) that indicates gross income does not include "gifts." The Petitioner's entire theory of defense rested upon the argument that he did not willfully evade paying child support because he did not have income and that gifts did not constitute such income. The Petitioner's theory rested so greatly on the gift versus income argument that the Petitioner stipulated to the other three elements of the charges, including that the Petitioner failed to pay a support obligation for Maria, who lived in another State, and that support obligation remained unpaid for a

period longer than two years or was greater than $10,000.00.

The Petitioner attempted to proffer his theory of defense, but the Judge prohibited him from doing so. Specifically, the Petitioner began to explain the nature of U.S. Tax Code when the Judge informed Counsel that he would "instruct the jury on the law, not the attorneys." Despite his assertion and promise to instruct the jury on the law, the Judge never made the instruction. Again, counsel reiterated his theory for defense both on and off the record, but the Judge refused to allow the jury to consider the argument. Instead, the Judge informed Counsel that he had made a "mistake of law" and that the Internal Revenue Code states "income from whatever source is taxable."

The Judge made this decision despite the multitude of cases regarding 18 U.S.C. § 228 that rely on and discuss tax law. *See, e.g., Kramer*, 225 F.3d at 857 (comparing the element of willfulness to the willfulness necessary in tax evasion); *Black*, 125 F.3d at 465 (highlighting the importance of income and the defendant's taxes in consideration of willfulness). The Judge's refusal to instruct the jury regarding 26 U.S.C. § 102(a) prevented the jury from considering whether the gifts that the Petitioner received constituted income within the consideration of his child support obligations. Without this instruction and line

of defense, the Judge prejudiced the jury and denied the Petitioner a fair trial.

ARGUMENT OF THE FOURTH ISSUE

The district court abused its discretion by requiring the Petitioner to pay $247,843.99 in restitution and not considering the $167,000.00 amount that the Petitioner made in payments towards that restitution with his family's consent.

Although a restitution order is reviewed only for an abuse of discretion, appellate courts have not been hesitant to vacate a restitution order where it is clear from the record that the defendant is unable to satisfy the order. *See United States v. Lampien*, 89 F.3d 1316, 1323 (7th Cir. 1996); *United States v. Johnson-Wilder*, 29 F.3d 1100, 1106-07 (7th Cir. 1994); *United States v. Murphy*, 28 F.3d 38, 41-42 (7th Cir. 1994); *United States v. Mahoney*, 859 F.2d 47, 51-52 (7th Cir. 1988).

18 U.S.C. § 228 requires a court, upon a conviction under the Act, to order restitution under 18 U.S.C. § 3663 "in an amount equal to the past due support obligation as it exists at the time of sentencing." 18 U.S.C. § 228(d). Section 3663(a)(1)(B)(i) requires courts to consider, when determining the amount of restitution to be ordered, "(I) the amount of the loss sustained by each victim as a result of the offense; and (II) the financial resources of the defendant, the

financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate." 18 U.S.C. § 3663(a)(1)(B)(i).

The decision abused its discretion by failing to consider "the financial needs and earning ability of the defendant" when fashioning the restitution order. The Court did not adequately consider the effect of the Petitioner's 24-month term of imprisonment and the consequent loss of his job and licenses, due to non-payment of child support, on his earning ability. Here, failure to reduce the restitution award in light of the Petitioner's changed circumstances constitutes an abuse of discretion that warrants remand for reconsideration of an appropriate restitution award.

In *United States v. Lampien*, the court reversed the district court's imposition of a $498,972.94 restitution order on a defendant sentenced to 24 months in prison. 89 F.3d 1316, 1325 (7th Cir. 1996). The court noted that at the time it orders restitution

> it is most paramount that the defendant, in the all-important rehabilitative process, have at least a hope of fulfilling and complying with each and every order of the court. Thus, an impossible order of restitution, as made in this case, is nothing but a sham, for the defendant has no chance of complying with the same, thus defeating any hope of restitution and impeding the rehabilitation process.

Id. (citing *Mahoney*, 859 F.2d 47, 52). The *Lampien* court ultimately determined that the district court had failed to consider, pursuant to the statute, the defendant's ability to pay, in light of the defendant's extremely meager financial assets and poor health. *Id.*

Similarly, in this case, the district court has sentenced the Petitioner to 24 months in prison and to pay a restitution of $247,843.99. The district court failed to consider that the Petitioner was faithfully making said payments when he had the financial means. Also, the district court erred in ignoring evidence that the Petitioner's financial circumstances and income has significantly changed due to the suspension of his six medical licenses because of non-payment of child support. The Petitioner is not in the same financial position he was in when the Order of Support was issued nine years ago. Furthermore, any gifts that were received in the past cannot constitute past income or be an indication of future income.

The district court must consider each of the statutory factors in § 3663 when determining the specific amount ordered as restitution.

Considering the Petitioner's prison sentence and change in financial circumstances it is clear that the district court abused its discretion in ordering restitution in an amount of $247,843.99; an amount that the Petitioner will not be able to pay.

CONCLUSION

Wherefore, based on the foregoing, Petitioner respectfully asks that this Petition for a Writ of Certiorari be granted and that the Petitioner be granted relief.

The Seventh Circuit panel has clearly deviated from other circuits and its own established precedent. It is within the interests of justice that this Honorable Court grants certiorari of this case.

Respectfully submitted,

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In the
United States Court of Appeals
For the Seventh Circuit

No. 10-1331

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RAFIK M. HANNA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.
No. 09 CR 00406 – **David H. Coar,** *Judge.*

ARGUED SEPTEMBER 9, 2010 –
DECIDED DECEMBER 22, 2010

Before WOOD, EVANS, and TINDER, *Circuit Judges.*

WOOD, *Circuit Judge.* In the wake of his divorce, Dr. Rafik Hanna was ordered by an Illinois court to make child-support payments to his daughter. For the most part, he flouted this order. After several years of nonpayment and a move to Washington State, a federal grand jury in Chicago indicted Hanna on charges that he willfully failed to pay a support

obligation to a child residing in another state, in violation of the Deadbeat Parents Punishment Act of 1998, 18 U.S.C. § 228 ("Section 228"). A jury convicted Hanna, and the district court sentenced him to two years' imprisonment and a year of supervised release; the court also ordered him to pay $247,843.99 in restitution. In this appeal, Hanna primarily attacks the sufficiency of the evidence on two points – his income and willfulness. Hanna adds that the district court should have instructed the jury on the U.S. Tax Code, that it abused its discretion by admitting unfairly prejudicial evidence, and that it erred by failing to alter the restitution order to reflect a support payment that he made after he was convicted. We conclude that the district court committed no reversible error and thus affirm the judgment.

I

When his daughter was born in 1996, Hanna was earning roughly $180,000 annually as a pathologist in Illinois. Shortly after her birth, Hanna and his wife sought a divorce, which was finalized in March 1999. In September 2001, an Illinois court ordered Hanna to make biweekly child-support payments of $967.38 through August 2014. At times, the court enforced its order by garnishing Hanna's wages. Hanna asserts that in 2002 he began having trouble finding steady employment. Around that time, he stopped working as a pathologist and left Illinois for the Pacific Northwest.

Hanna landed in Vancouver, Washington, a border-town suburb of Portland, Oregon. There, for a brief time, he maintained a checking account at Bank of America. But then the Washington State Division of Child Support sent him a number of notices informing him that he owed over $38,000 in back child-support payments. He elected not to respond to those notices, and so in December 2003, the Washington authorities attached the entire balance (just over $4,000) then in the account. Rather than replenishing it and thus making more money available to the state, Hanna closed it. A year later, after additional requests for payment, the state suspended Hanna's license to practice medicine in Washington.

In the meantime, Hanna was living quite well. Hanna took out a lease for a Lexus ES 300 in October 2002, and paid nearly $800 a month for the car through September 2005. In December 2003, just three months after losing his Washington medical license, he leased a Porsche Boxster S, putting $1,455 down and agreeing to pay $930 a month for five years. On the lease application, Hanna listed an annual income between $100,000 and $150,000. In August 2005 Hanna leased a third car (a Jaguar) for almost $950 per month, and in March 2008 Hanna took out a fourth lease of $1,100 a month for an Audi A6. All the while, Hanna spent significant sums on travel, gifts, and entertainment. He vacationed at spa resorts on Catalina Island in California, on Victoria Island in British Columbia, and at Sun-river in Oregon; he played golf at championship courses; he

frequented the symphony and professional basketball games; he funded expensive shopping excursions for a new girlfriend at high-end clothiers such as Bebe and Nordstrom; and he even took a trip to Walt Disney World.

To support this lifestyle, Hanna maintained two accounts in Canada at the Bank of Nova Scotia. Between April 2005 and April 2009, those accounts took in over $500,000, a significant portion of which came from members of Hanna's family. Hanna explained that his family had supported him during this period because he had no income and was unable to secure "any form of substantial employment" – a condition explained in large part by the fact that other states followed Washington's lead and revoked the remainder of his medical licenses. Hanna's ability to spend freely, he maintains, was further limited by the gifts themselves because they came with "strings attached." The donors, according to Hanna, insisted that he use the funds only to cover his own support and his credit card payments; apparently they did not want him to keep current with his child-support obligations.

In May 2005, two weeks after his indictment, Hanna was arrested. Shortly thereafter, Special Agent Robin Bonn of the U.S. Department of Health and Human Services interviewed Hanna, who admitted that he had not met his child-support obligations even after receiving past-due notices and warnings about the possible suspension of his medial licenses. When asked why he had not paid, Hanna replied

defiantly, "I am not going to use my life lines to pay child support. I'm using them to pay myself." At trial, Bonn testified about the interview. During closing arguments the government displayed Hanna's statement beneath side-by-side photographs of his daughter and a Porsche Boxster S. Hanna objected to the exhibit, but the district judge overruled the objection. In his closing argument, Hanna's lawyer referred to the U.S. Tax Code (alluding to Hanna's theory that "income" for purposes of child-support obligations is identical to "income" for purposes of federal taxes); the lawyer later tried unsuccessfully to persuade the district court to instruct the jury on tax law. The jury convicted, and the court then ordered the usual presentence investigation. Just a week before his sentencing hearing, Hanna suddenly paid $167,000 toward his child-support arrearage. As part of the sentence, the court ordered Hanna to pay $247,843.99 as restitution – the amount he owed in back support payment as of the day of his conviction, without in so many words taking into account the $167,000 payment. This appeal followed.

II

A

Hanna first presents two arguments based on the sufficiency of the evidence to support his conviction. Both derive from his assertion that between 2005 and 2009 he lived almost exclusively on gifts from family members. To succeed, Hanna must convince us that

even when viewing the evidence in the light most favorable to the verdict, no rational jury could have found the essential elements of the crime beyond a reasonable doubt. See *Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *United States v. Smith,* 576 F.3d 681, 686 (7th Cir. 2009). Neither of Hanna's arguments comes close to meeting that standard.

First, Hanna asserts that there was insufficient evidence of his "income" to sustain his conviction. In his view, gifts do "not constitute income under the child support order" because they receive special treatment under the Internal Revenue Code; it thus follows, he asserts, that he could not have violated Section 228. Punishment under Section 228, however, has nothing to do with a defendant's income for tax purposes, and the word "income" is nowhere to be found in the statute. Section 228 punishes any person who "willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than $10,000." 18 U.S.C. § 228(a)(3). State law determines which financial resources may be considered in setting a "support obligation" under the statute; we do not have before us the question whether the state court properly applied its own law in setting a support obligation, nor would that be within our jurisdiction in any event. See *id.* § 228(f)(3); *United States v. Kramer,* 225 F.3d 847, 851 (7th Cir. 2000).

Though Hanna seems to concede the latter point, his argument apparently rests on the fact that Illinois

courts look at a noncustodial parent's "net income" when computing the amount of child support due. See 750 ILCS 5/505(a)(3) ("Section 505"). Though largely beside the point, Hanna's argument misunderstands Illinois law. Gifts from family members are part of a parent's "net income" under Section 505 and are properly included when an Illinois court tabulates how much to require from a parent when ordering child support. See *In re Marriage of Rogers,* 820 N.E. 2d 386, 390-91 (Ill. 2004). Bequests are also normally income for purposes of child support, even though they receive special treatment under the Internal Revenue Code.

Hanna's second argument focuses on whether there was enough evidence to permit the jury to find that his conduct was "willful." He takes the position that, because his gifts came with "strings attached" and he was "obligated to follow the wishes of the giftors and utilize the funds to pay himself" rather than paying his child support, there is no evidence that he willfully avoided paying his support obligation. Frankly, this strikes us as frivolous. First, there is no reason why the jury was obliged to credit this explanation, nor is there any reason to think that Illinois would enforce this kind of private expectation. We have joined other circuits in holding that the willfulness element under Section 228 is satisfied by proof that the defendant intentionally violated a known legal duty to pay child support. See *United States v. Bell,* 598 F.3d 366, 370-71 (7th Cir. 2010) (collecting cases); *Kramer,* 225 F.3d at 857. The

necessary failure to pay can be shown either by a refusal to pay money already in the defendant's possession or by proof that the defendant consciously avoided having sufficient resources – for example, by refusing to work – to pay a support order. See *United States v. Edelkind,* 525 F.3d 388, 399 (5th Cir. 2008).

A true inability to pay is a different matter; that might negate the element of willfulness under Section 228. As the Second Circuit has explained, a "defendant's inability to pay any amount past due . . . provides a defense to liability under the Act, and the defendant is free to present evidence that during the period charged in the indictment, his income was not sufficient, after meeting his basic subsistence needs, to enable him to pay any portion of the support obligation." *United States v. Mattice,* 186 F.3d 219, 228-29 (2d Cir. 1999); *cf. Bell,* 598 F.3d at 371 (approving jury instruction patterned on *Mattice*).

But this is a functional test that does not depend on the restricted concept of "income" that Hanna has pressed. Hanna reads *Mattice* and our decision in *United States v. Black,* 125 F.3d 454 (7th Cir. 1997), as standing for the proposition that "income" includes only those funds treated as income by the Internal Revenue Service for tax purposes. (The definition of gross income is capacious, see 26 U.S.C. § 61, but it is true that gifts are taxed under a separate regime, see 26 U.S.C. §§ 2501 *et seq.*) On the basis of that understanding, Hanna argues that the large cash gifts he received from his family were not part of his "income," and therefore those funds could not be

considered when determining whether he had the ability to pay what he owed to support his daughter. The Illinois statute, however, adopts no such link between funds to which the state may look for support and income that may be subject to federal tax. While *Mattice* and *Black* mention the word "income" and examined federal tax returns, neither opinion suggests that a jury is permitted to consider only a defendant's federally taxable "income" when determining that defendant's ability to pay. To the contrary, the states can and do assert the right to look at the defendant's resources more broadly. See, *e.g.*, BLACK'S LAW DICTIONARY 778 (Brian A. Garner ed., 8th ed. 2004) (defining income as "money or other form of payment that one receives" from, among other things, "gifts . . . and the like"); BORIS I. BITTKER & LAWRENCE LOKKEN, I FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS 5-1 (3d ed. 1999) (describing how federal tax "income" differs from broader notions of "income"); HENRY C. SIMONS, PERSONAL INCOME TAXATION 50 (1938) (proposing the "Haig-Simons" definition of "income," which is the "algebraic sum" of the market value of one's consumption and the "change in the value of the store of property rights" during the relevant period of time); Richard Schmalbeck, *Gifts and the Income Tax – An Enduring Puzzle,* 73 LAW & CONTEMP. PROBS. 63, 63-65 (2010) (describing gifts as income under the widely-accepted Haig-Simons conception of income). Nothing in federal law prevents states from considering cash gifts when they enforce a support obligation. Indeed, we do much the same thing when we determine whether a party may

proceed *in forma pauperis* in this court; for that purpose, we look at all resources, including gifts. See Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis, FED. R. APP. P. Form 4.

Hanna's proposed limitation ignores the fact that determining whether a person has the "ability to pay" for something is much different than asking whether she has taxable income. *Cf.* WILLIAM A. KLEIN ET AL., FEDERAL INCOME TAXATION 6-8 (14th ed. 2006) (distinguishing ability to pay and income). While the presence of "income" in the sense the term is used in the tax laws is relevant to the ability to pay a debt, the converse of that statement is not true. A person's nontaxable assets may be used to satisfy a debt. *Mattice* and later cases recognized this when they held that a defendant's ability to meet his "basic subsistence needs," not the defendant's income, is what matters for purposes of the prosecutor's effort to prove willfulness. See, *e.g., United States v. Kukafka,* 478 F.3d 531, 539 (3d Cir. 2007). A jury might find proof of willfulness lacking if the evidence showed that the defendant had no ability to pay even a part of the support debt.

In summary, for purposes of assessing the defendant's ability to pay in a prosecution under Section 228, a jury is entitled to look beyond the narrow concept of "income" used in the tax laws and to consider all of the resources available to a defendant, regardless of their source. If the evidence shows, as it did here, that the defendant received thousands of dollars in gifts from family, yet refused to use any of

those funds to pay a support obligation, it is more than enough to support the "willfulness" element of the statute.

Other circuits have come to conclusions consistent with ours. See, *e.g.*, *Edelkind,* 525 F.3d at 398-99 (approving a jury instruction that defined willfulness in terms of whether the defendant "had money which he used to pay other expenses beyond living expenses instead of paying his child support"); *United States v. Smith,* 278 F.3d 33, 36-37 (1st Cir. 2002) (approving of jury instruction requiring government to prove that a defendant "had sufficient funds" to show willfulness); *United States v. Ballek,* 170 F.3d 871, 873 (9th Cir. 1999) (explaining that willful can mean "having the money and refusing to use it for child support; or, not having the money because one has failed to avail oneself of the available means of obtaining it"); *cf. Kukafka,* 478 F.3d at 539 (approving ability to pay instruction that referred only to a defendant's "ability to pay" without any reference to income). See also H.R. Rep. 102-771, at 6 (1992) (discussing the Child Support Recovery Act of 1992, a precursor to the Deadbeat Parents Punishment Act of 1998, and using the term "sufficient funds" rather than the narrower phrase "taxable income").

Stripped of his technical argument about his ability to pay, Hanna cannot prevail on his second challenge to the evidence. Between 2005 and 2009 Hanna had over $500,000 deposited into his Canadian bank accounts, leased several luxury cars, went on expensive vacations, and lived a life well beyond

his "basic subsistence needs." Nor does the record bear out Hanna's contention that this money came with "strings attached." In fact, Hanna spent liberally on other people, such as his new girlfriend, whom he treated to luxurious shopping sprees and vacations. The jury was entitled to infer that by closing his U.S. bank accounts and replacing them with Canadian accounts that (he assumed) were beyond the reach of compelled garnishment, Hanna attempted affirmatively to evade enforcement of his obligation. And, even though his medical licenses were suspended and he could not work as a pathologist, he remained someone with a high level of skill, education, and training.

The jury could have inferred that he consciously chose not to work elsewhere in any field where those skills might have been exploited.

B

Hanna next argues that the district court made a number of errors during trial and sentencing. We address these issues briefly. First, although he did not offer any jury instructions, Hanna argues that district court should have instructed the jury on the provision of U.S. Tax Code that excludes gifts from "gross income" for tax purposes, see 26 U.S.C. § 102(a), because his lawyer talked about it during his closing argument. The argument, however, has been forfeited. See FED. R. CRIM. P. 30(d). Hanna has no hope of showing plain error, because, as we have

already explained, the court's decision not to address this matter was correct.

Second, Hanna accuses the district court of abusing its discretion during closing arguments by admitting an exhibit from the government that displayed side-by-side pictures of his daughter and a Porsche Boxster just above his statement to Agent Bonn – "I am not going to use my life lines to pay child support. I'm using them to pay myself." This combination of materials, Hanna asserts, inflamed the jury and was therefore unfairly prejudicial. See FED. R. EVID. 403. Because "most relevant evidence is, by its very nature, prejudicial," we have emphasized that evidence must be *unfairly* prejudicial to require exclusion. *United States v. Thomas,* 321 F.3d 627, 630 (7th Cir. 2003).

Hanna has not demonstrated that he was unfairly prejudiced, let alone that the district court abused its discretion by admitting the exhibit. He does not deny making the statement. All he says is that the exhibit inflamed the jury by suggesting that he placed a higher value on his Porsche than his daughter. The government stands by its exhibit and the message it conveyed: that Hanna did, in fact, place a higher premium on his cars and lifestyle than his own daughter. In our view, the district court was entitled to come to the conclusion that the exhibit, while hard-hitting, was a permissible use of the evidence in the case. It illustrated graphically Hanna's willfulness and the choice he made to live a life of luxury while at the same time ignoring his obligation

to pay child support. Where, as here, a defendant is "being prosecuted for exactly what [the evidence] depicts," *United States v. Burt*, 495 F.3d 733, 741 (7th Cir. 2007), we have consistently rejected Rule 403 challenges. See, *e.g.*, *United States v. Zawanda*, 552 F.3d 531, 535 (7th Cir. 2008).

Finally, Hanna argues that the district court erred by setting the restitution order at $247,843.99. Several months after his conviction, but just a week before his sentencing hearing, Hanna made a $167,000 payment, which is not reflected in this figure. Hanna argues that, based upon Section 228, the district court should have reduced the amount of restitution to reflect his payment. (In fact, Hanna failed to raise this objection before the district court, and so he should be arguing plain error; the government failed to notice this, however, and so we will use the more lenient standard.) Section 228 requires the district court to order restitution "as it exists at the time of sentencing," 18 U.S.C. § 228(d), which Hanna interprets as requiring the district court to take account of his eleventh-hour payment. We can assume, as Hanna does, that it would be wrong for the district court to ignore his payment and require him to pay a larger figure. But that is not what the court did. Instead, consistent with 18 U.S.C. § 3663A (the Mandatory Victim Restitution Act), the district court ordered $247,843.99 restitution "less any amount paid toward [the] arrears." The latter phrase assures that Hanna's payment will be credited properly to the satisfaction of the total debt. Simple subtraction

shows that as of the time of sentencing, the amount that Hanna still owed was $247,843.99-$167,000, or $80,843.99. The larger figure came from Hanna's Presentence Investigation Report, which was prepared before he made his last-minute payment. The district court's formula was a satisfactory way of handling not only this adjustment, but any others.

The judgment of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT

Northern District of Illinois

UNITED STATES OF AMERICA	)	**JUDGMENT IN A CRIMINAL CASE**
v.	)	Case Number: 09 CR 406-1
RAFIK M. HANNA	)	USM Number: 71710-065
	)	Bradley Jay Harris & Saher Joseph Macarius
	)	Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) Count 1 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §228(a)(3)	Failure to Pay Child Support	5/12/2009 (to current – see indictment)	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

2/3/2010
Date of Imposition of Judgment

/s/ David H. Coar
Signature of Judge

David H. Coar
Name of Judge

U.S. District Judge
Title of Judge

2/3/2010
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months on Count 1

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY
UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

One Year

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall submit to one drug test within 15 days of release from imprisonment and random drug tests thereafter, conducted by the U.S. Probation Office, not to exceed 104 tests per year.

The defendant shall perform 100 hours of community service work.

If the defendant is unemployed after the first 60 days of supervision, or if unemployed for 60 days after termination or lay-off from employment, he shall perform at least 20 hours of community service work per week at the direction of and in the discretion of the U.S. Probation Office until gainfully employed, unless excused by the probation officer for schooling or other acceptable reasons.

The defendant shall pay any financial penalty that is imposed by this judgment, and that remains unpaid at the commencement of the term of supervised

release. The defendant's monthly payments toward any unpaid financial obligations imposed by this judgment shall be equal to ten percent of his net monthly income.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$ 247,843.99

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Illinois State Disbursement Unit P.O. Box 5400, Carol Stream, IL 60197		$247,843.99	*(less any amount paid toward arrears)
TOTALS	$ 0.00	$ 247,843.99	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the
☐ fine ☑ restitution.

☐ the interest requirement for the
☐ fine ☐ restitution is modified as follows:

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D or, ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

10% of net monthly income. The fine, cost of incarceration and supervision are waived.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 228 FAILURE TO PAY LEGAL CHILD SUPPORT OBLIGATIONS

(a) Offense. – Any person who –

(1) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000;

(2) travels in interstate or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000; or

(3) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than $10,000; shall be punished as provided in subsection (c).

(b) Presumption. – The existence of a support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

750 ILCS 5/505(a)(3)

Net income is income from all sources (including second jobs, overtime, holiday pay, etc.) minus the following deductions:

- Federal income tax (which has been properly calculated)
- State income tax (which has been properly calculated)
- Social Security (FICA payments)
- Mandatory retirement contributions required by law or as a condition of employment
- Union dues
- Dependent and individual health/hospitalization insurance premiums
- Prior obligations of support or maintenance actually paid pursuant to a court order
- Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts